

17 P

*Copy in [illegible]*

1954

November 5

NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

Mr. Lawton B. Chandler, Chairman  
Board of Investigation  
State House  
Concord, New Hampshire

Dear Sir:

You have this date referred to us an instrument which purports to be a true copy of a resolution of the City of Portsmouth made on September 22, 1954. By its terms the resolution authorizes a \$2,750,000 bond issue of the City for the construction and furnishing of a high school building.

You state that you have been advised by the City Solicitor of Portsmouth, in a telephone conversation, that final action on this bond issue as provided by the city charter has not yet been completed; his advice is, as I understand it, to the effect that while the City Council has voted to issue the bonds, the appropriation upon which such bonds are to be based has not yet been made, a certain number of readings of the appropriation bill being yet required before such final action can be taken. He asks that you so fix the time of hearing under Laws 1951, c. 5, s. 5 that the same will coincide with or follow immediately after the meeting of the City Council at which the appropriation is expected finally to be made.

You are now faced with the question whether, as a matter of law and in view of the statement of the Solicitor, a hearing by the Board of Investigation in accordance with section 5 should now be warned. Upon a consideration of the matter, we advise in the affirmative.

Laws 1953, c. 9 provides that a city may vote to issue bonds or notes for specified school purposes in an amount not to exceed a certain percentage of the last assessed valuation, subject to conditions set forth in the statute, one of which is a consideration of the matter by the Board of Investigation after a hearing thereon. In the section (s. 2) authorizing the vote it is provided that a "certified copy of the record of the action of the . . . city . . . shall forthwith be presented to the Commissioner of Education."

Mr. Lawton B. Chandler, Chairman  
Board of Investigation

-2-

The instrument hereinbefore referred to purports to be such "record of the action of the city" within the meaning of section 2; and it shows no infirmity upon its face. It has been properly presented to the Commissioner of Education who has now forwarded it to you as Chairman of the Board of Investigation, as required by Laws 1951, c. 5, s. 5.

In the circumstances it would appear that you are entitled to rely upon the instrument; the instrument, moreover, is adequate to set in motion the procedure provided by the statute.

No authority is seen in the City Solicitor by telephone conversation or otherwise to cast such a cloud upon the formal instrument as to divest it of its efficacy. We would rule, therefore, that the instrument is still fully effective for such purposes as on its face it purports to be, despite the statement of the Solicitor.

By the same token we advise that it is not necessary that regard be had for the Solicitor's request concerning the time of hearing. You are acting upon the instrument in all respects and not upon extraneous evidence such as his statement constitutes. In issuing notice of the hearing, you need have regard only to section 5.

The resolution is returned.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEH/T  
CC/Comm. Education